



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Department of Social Services
VAC Chapter Number:	22 VAC 40-111
Regulation Title:	Minimum Standards for Licensed Family Day Homes
Action Title:	Proposed Regulation
Date:	November 26, 2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The public comment received during the Periodic Review of the Minimum Standards for Licensed Family Day Homes (22 VAC 40-110-10 et seq.) completed in June 1999, indicated a need to strengthen the standards' safety requirements, provider training requirements, and requirements for quality child care.

This regulation is considered essential to protect the health, safety and welfare of children who are separated from their parents during a part of the day by (i) establishing standards to ensure that the activities, services, and facilities of a family day home are conducive to the health, safety and well-being of children and (ii) by reducing the risk of harm to children in a family day home environment.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to

which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

§§ 63.1-25, 63.1-195, 63.1-196, and 63.1-202 of the *Code of Virginia* provide legal authority for the Department of Social Services to promulgate this regulation. The *Code of Virginia* mandates the licensure of family day homes serving six through twelve children, exclusive of the provider's own children and any children who reside in the home. Every person who maintains such a family day home, except family day homes that are members of a licensed family day system, is required to obtain a license from the Commissioner of Social Services. The State Board of Social Services is mandated to promulgate regulations for the activities, services, and facilities used by a person and agency required to be licensed as a family day home by the Department of Social Services.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

This regulation would incorporate the repealed Minimum Standards for Licensed Family Day Homes (22 VAC 40-110-10 et seq.) into a proposed regulation, entitled Minimum Standards for Licensed Family Day Homes (22 VAC 40-111-10 et seq.). The text will be reorganized and reworded for clarity as has been requested by regional licensing staff, experts in child care/child development, other interested parties, and licensed family day home providers. The following are issues that will be addressed in the proposed regulation:

The department will use language in the proposed Minimum Standards for Licensed Family Day Homes (22 VAC 40-111-10 et seq.) to better conform with the language of the state's building, fire and health regulations.

22 VAC 40-110-10. Definitions

1. Change the definition of family day home assistant to "an individual who is 14 years of age or older and who, under the direct supervision of the provider or substitute provider, provides care, protection, supervision and guidance to children in the family day home."

Justification: This change clarifies the level of supervision required for a family day home assistant and, together with other standards, discourages providers from engaging in employment outside the home and not providing the direct care of the children. This practice has been identified by regional licensing staff as a problem.

2. Change the definition of physician to “an individual licensed to practice medicine in any of the fifty states or the District of Columbia.”

Justification: Consistency in licensing standards; matches the definition used in the Minimum Standards for Licensed Child Day Centers.

3. Add the following definitions:

“Infant” means a child from birth to 16 months.

“Toddler” means a child from 16 months to 24 months.

“Programmatic experience” means time spent working directly with children in a group. Work time shall be computed on the basis of full-time work experience during the period prescribed or equivalent work time over a longer period. Experience settings may include but not be limited to a child day program, family day home, child day center, boys and girls club, field placement, elementary school, or a faith-based organization.

Justification: Consistency in licensing standards; more closely matches the definitions used in the Minimum Standards for Licensed Child Day Centers.

“Residence” means principal, legal dwelling or abode.

Justification: This addition clarifies that the care provided must be in a facility that is the legal residence of the provider, and discourages a provider from attempting to circumvent regulations for child day centers by operating a family day home in a home that is not the provider’s legal residence. This practice has been identified as a problem by regional licensing staff.

22 VAC 40-110-40. Qualifications for Caregivers

Amend the section to also include the following:

a. The provider shall be responsible for the home’s day-to-day operation and for meeting licensing requirements.

Justification: Need to focus responsibility for compliance with standards on the licensee (this is consistent with language in the licensing standards for adult programs). Regional licensing staff have requested this change.

b. The provider shall be responsible for the health, safety, and welfare of children in care.

Justification: Need to focus responsibility for compliance with standards on the licensee (this is consistent with language in the licensing standards for adult programs). Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia). Recommendation (6) of JLARC’s Follow-Up Review of Child Day Care in Virginia (House Document No. 5, 1998). Regional licensing staff have also requested this change.

- c. The family day home provider shall provide direct care to children during the majority of the time the family day home is in operation.

Justification: This addition would discourage providers from engaging in employment outside the home and not providing the direct care of the children. This practice has been identified by regional licensing staff as a problem.

22 VAC 40-110-70. Criminal Behavior

Amend section to read:

Caregivers and any other adults living in the family day home shall comply with the Regulation for Criminal Record and Child Abuse/Neglect Registry Checks for Child Welfare Agencies (22 VAC 40-190-10 et seq.)

Justification: § 63.1-198.1 of the Code of Virginia; HB 1388 effective July 1, 1998.

22 VAC 40-110-80. First Aid Certification

Amend section to read:

Providers and substitute providers shall obtain certification in pediatric first aid, CPR and rescue breathing within six months of licensure or employment and shall maintain a current pediatric first aid and CPR certificate endorsed by or from:

1. The American Red Cross
2. The American Heart Association
3. The National Safety Council
4. A community college
5. A hospital
6. A volunteer rescue squad
7. A fire department, or
8. Other similarly approved program

Justification: Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia). This language is consistent with language in the licensing standards for adult programs which allows for additional sources of training. Clarifies that training in CPR is required. Regional licensing staff have requested this change.

22 VAC 40-110-90. Additional Training

Change section title to “**Training**” and amend section to also include:

In addition to first aid training, caregivers shall obtain a minimum of eight (instead of the current six) hours of training annually ...

The provider in a family day home licensed to serve 9-12 children shall meet one of the following:

1. Six months of programmatic experience; a high school diploma, G.E.D. or verification of completion of a home school program approved by the state, and (within six months prior to licensure as a family day home serving 9-12 children), have received a minimum of twelve (12) clock hours of training related to the care of children, including child development, playground safety, and health and safety issues, including child abuse and neglect. These training hours shall be in addition to first aid and CPR training hours; or
2. Three months of programmatic experience and at least one of the following educational backgrounds:
 - a. A one year early childhood certificate from an accredited college or university that consists of at least 30 semester hours;
 - b. A child development credential by a national organization approved by the department;
 - c. An endorsement or bachelor's degree in a child related field from an accredited college or university;
 - d. Forty-eight semester hours or 72 quarter hours of college credit from an accredited college or university of which 12 semester hours or 18 quarter hours are in subjects relating to group care of children.

EXCEPTIONS:

1. The programmatic experience may be waived by the completion of a curriculum approved by the Department of Social Services.
2. Family day home providers licensed prior to the effective date of these standards to serve 9 –12 children do not have to meet the programmatic experience and educational background requirements above.

Justification: Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia). This language is consistent with language in the Minimum Standards for Licensed Child Day Centers and the licensing standards for adult programs. Providers, parents, regional licensing staff, and childcare advocates have requested this change.

22 VAC 40-110-120. Staffing

Add to section:

No caregiver shall be used to meet staff/child ratios for more than two (2) consecutive eight-hour shifts of care.

Justification: Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia). Regional licensing staff and childcare advocates have requested this change.

22 VAC 40-110-130. Determination of Staffing Level

Incorporate into new section entitled “**Children With Special Needs**” with the following changes in language:

The caregiver shall provide children with special needs with the care and activities recommended by qualified psychologists, physicians, or other experts.

A parent or physician shall provide a written plan that includes instructions for any special treatment, diet, or restrictions in activities that are necessary for the health of the child.

The consistency of food provided for a special needs child shall be appropriate to a child’s special feeding needs. Necessary and adaptive feeding equipment and feeding techniques shall be used for children with special feeding needs.

The provider shall ensure the environment is appropriate for the child and shall instruct staff in the proper techniques of care.

The home shall perform only those procedures and treatments for which caregivers have the necessary training, experience, credentials or license to perform.

Staffing shall be appropriate and adequate to meet the specific physical and/or developmental needs of any special needs child in care.

In determining the need for an assistant, the provider shall apply the following point system for special needs children. Each caregiver shall not exceed sixteen (16) points. The provider’s own and resident children under eight (8) years of age count in the point maximums.

1. Children with severe and profound disabilities, multiple disabilities, or serious emotional disturbance count as four (4) points each.
2. Children diagnosed as trainable mentally retarded, or with physical and sensory disabilities, or with autism count as three (3) points each.
3. Children diagnosed as educable mentally retarded or developmentally delayed count as two (2) points each.
4. Children diagnosed with attention deficit/hyperactivity disorder count as two (2) points each.

NOTE: Whenever 22 VAC 40-111-120 requires more staff than 22 VAC 40-111-130 because of the children’s ages, 22 VAC 40-111-120 shall take precedence over 22 VAC 40-111-130.

Justification: Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia). Change requested by childcare advocate.

22 VAC 40-110-190. Smoke-free Environment

Change section title to “Smoking and Prohibited Substances” and add to section:

Alcohol and illegal drugs shall not be consumed/used in any area of the family day home during hours of operation.

Justification: Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia).

22 VAC 40-110-200. Hazards

22 VAC 40-110-230. Firearms

Entitle section “Hazards” and amend to also include the following:

Hanging items, including but not limited to, window blind cords, appliance cords, and tablecloths shall be out of the reach of small children.

Justification: The Consumer Product Safety Commission, in a national study to identify safety hazards in child care settings conducted in October and November 1998, found that about one child a month strangles in window covering cords. At least two children since 1990 have died in child care settings after standing up in their cribs and becoming entangled in a window blind cord.

Bathtubs, buckets, and pails of water shall be emptied immediately after use.

Justification: The American Academy of Pediatrics reports that drowning is the number one cause of death in children under age 5. Any amount of water, even a few inches in a bathtub, can be dangerous to a child. Since the head is the heaviest part of a small child’s body, he or she can easily fall into bathtubs, buckets or pails of water. Also, when large containers are filled with liquid, they weigh more than the child and will not tip over to allow the child to get out.

Firearms shall be stored unloaded and apart from ammunition during the family day home’s hours of operation. All sporting equipment and other potentially hazardous devices, including firearms and ammunition, shall be stored in locked areas with keys out of reach of children.

Justification: The National Safe Kids Campaign reports that in 1999, an estimated 60 children ages 14 and under died from unintentional shootings in the home. Of these children, more than 80 percent were ages 5 to 14. Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia).

22 VAC 40-110-210. Ventilation

Amend to also include the following:

a. In all inside areas occupied by children, the temperature shall be maintained no lower than 68°F.

b Fans or other cooling systems shall be used when the temperature of inside areas occupied by children exceeds 80°F.

Justification: For ease of administration, makes standard more consistent with Minimum Standards for Licensed Child Day Centers. Change requested by regional licensing staff.

22 VAC 40-110-270. Doors

Amend to include the following:

Clear glass doors shall be clearly marked at a child’s eye level.

Justification: Clarification requested by provider.

22 VAC 40-110-330. Safety Plugs

Amend to read:

Child-resistant protective covers shall be installed on all unused electrical outlets accessible to children less than five (5) years of age unless any child’s behavior or judgment requires continued use.

Justification: Less burdensome to providers. Change requested by provider.

22 VAC 40-110-400 Fire Extinguishers

22 VAC 40-110-410 Smoke Detectors

22 VAC 40-110-470. Fire Hazards

Standards for fire safety will be replaced with a statement that the family day home shall be in compliance with the applicable sections of the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code.

Justification: This change is necessary due to an opinion issued by the Attorney General’s office that the Department of Social Services did not have the authority under the Code of Virginia to promulgate any fire prevention regulations. Guidance received from State Fire Marshal’s Office.

22 VAC 40-110-480 and 490. Electrical Appliances/Sharp Kitchen Utensils

Move to section on “**Hazards**”. Amend to read:

Care shall be taken with small electrical appliances and sharp objects that are being used in areas frequented by small children. Small appliances shall be unplugged when not in use. When not in

use, sharp objects shall be placed in an area inaccessible to children or in a cabinet or drawer with child-resistant latches.

Justification: Necessary for clarity and readability.

22 VAC 40-110-510. Spaces

Amend to read:

Usable floor space of 25 square feet per child or a total of 300 square feet for a home caring for the maximum of 12 children shall be available for children’s activities, exclusive of halls, bathrooms, kitchen, office space, or storage areas.

There shall be a hazard-free outdoor play space of 75 square feet per child (a total of 900 square feet for a home caring for the maximum of 12 children) available for children’s outdoor activities either on the premises or within walking distance of the home. Play times may be staggered and space based on the number of children using the area at one time.

The following requirements shall apply to playground equipment:

Openings above the ground that are closed on all sides shall be smaller than 3 ½ inches or larger than 9 inches to prevent head entrapment hazards;

Sharp points, corners and edges shall be eliminated to prevent puncture wounds and serious lacerations;

Catch points, shearing points, crush points, and protrusions shall be eliminated to prevent entrapment, entanglement, or strangulation hazards that could injure children or catch their clothing;

“S” hooks shall be tightly closed;

Resilient surfacing shall be under equipment with moving parts and climbing apparatus;

A use zone shall encompass sufficient area to include the child’s trajectory in the event of a fall while the equipment is in use.

Justification: Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia). Meets current United States Consumer Product Safety Commission guidelines on home playground safety. Regional licensing staff have requested this change.

22 VAC 40-110-530 Rest Areas

This section will be amended to require:

Each child shall be provided with a designated crib, cot, rest mat, or bed for resting or napping.

Cribs, cots, and beds used by children shall have linens that are suitable to the season and assigned for individual use.

Linens shall be clean and sanitary and shall be washed at least weekly. Crib sheets shall be cleaned and sanitized daily.

Rest mats that are used shall have at least an inch of cushioning and be sanitized at least weekly and as needed.

Mattresses when used shall be covered with a waterproof material which can be sanitized.

Justification: Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia). For ease of administration, makes standard more consistent with Minimum Standards for Licensed Child Day Centers. Clarification requested by regional licensing staff.

22 VAC 40-110-570 Swimming Pools

22 VAC 40-110-580 Maintenance

22 VAC 40-110-720 Pool Supervision

These sections will be combined and entitled “**Water Safety**”. Amend sections to read:

- A. The staff-to-child ratios required by 22 VAC 40-110-120 shall be maintained while the children are participating in swimming or wading activities.
- B. When permanent swimming or wading pools are located on the premises of the family day home, the following shall apply:
1. The manufacturer’s specifications for operating the pool shall be followed as well as any local ordinances and any Department of Health requirements for swimming pools;
 2. Pools constructed, renovated, or remodeled after April 1, 1986, shall have a statement in writing of their inspection and approval from the local building official when such approval is required;
 3. Outdoor swimming pools shall be enclosed by safety fences and gates which are in compliance the applicable edition of the Virginia Uniform Statewide Building Code (13 VAC 5-61-10 et seq.) and shall be kept locked when the pool is not in use.
 4. Entrances to indoor swimming pools shall be locked when the pool is not in use.
- C. Wading pools shall be emptied and stored away when not in use during the normal family day home hours of operation. Children who are not toilet trained shall not use portable wading pools.

D. The family day home shall maintain written permission from the parent of each child who participates in swimming or wading, which shall include a statement advising of a child's swimming skills, before the child is allowed in water above the child's shoulder height.

E. If a pool, lake, or other swimming area has a water depth of more than two feet, a lifeguard holding a current certificate shall be on duty supervising the children participating in swimming or wading activities at all times when one or more children are in the water. The certification shall be obtained from an organization such as, but not limited to, the American Red Cross, the YMCA, or the Boy Scouts.

Justification: According to the Consumer Product Safety Commission, the American Red Cross and the National Lifeguard Association, there are no substitutes for "diligent supervision" of children around water. A young child can drown quickly and silently, often without any splashing or screaming. According to the Consumer Product Safety Commission, flotation devices are never to be used as a substitute for supervision, and knowing how to swim doesn't make a child drownproof. Requiring the presence of a certified lifeguard ensures the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia).

22 VAC 40-110-540 Cribs
22 VAC 40-110-550 Infant Seats
22 VAC 40-110-560 Walkers
22 VAC 40-110-660 Infants' Needs
22 VAC 40-110-670 Infant Seats
22 VAC 40-110-680 Play Spaces
22 VAC 40-110-690 Movement of Sleeping Infants
22 VAC 40-110-700 Stimulation

These sections will be reorganized into a section entitled, "**Infant/Toddler Care**" that will also include the following:

1. Infants shall be placed on their backs when sleeping or napping unless contraindicated by the child's physician. A written statement signed by the child's physician shall be provided to the caregiver.

Infants shall be placed to sleep on a firm, tight fitting mattress in a crib that meets current safety standards. No soft bedding of any kind should be used under or on top of the baby including but not limited to, pillows, quilts, comforters, sheepskins, or stuffed toys to reduce the risk of suffocation.

Justification: Ensure the health safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia). Meets current recommendations from the U.S. Consumer Product Safety Commission, the American Academy of Pediatrics, the National Institute of Child Health and Human Development, and the Sudden Infant Death Syndrome Alliance. Included as Recommendation (4) in JLARC's Follow-Up Review of Child Day Care in Virginia (House Document No. 5, 1998).

2. Infants and toddlers shall be:

Within sight and sound of a caregiver when awake and within sight or sound of caregiver when asleep;

Checked every fifteen (15) minutes when asleep;

Given opportunities to interact with caregivers and other children in the home in order to stimulate language development;

Allowed to form own patterns of sleeping, waking, and eating;

Encouraged to play with a wide variety of safe toys and objects;

Provided with individual attention from caregivers including holding, cuddling, talking, and singing;

Provided opportunities for reaching, grasping, pulling up, creeping, crawling and walking to develop motor skills;

Provided opportunities for outdoor play when weather permits;

Provided opportunities each day for freedom of movement, such as creeping, crawling, or walking in a safe, clean, open, uncluttered area;

Spend no more than one-half (1/2) hour of consecutive time during waking hours confined in a crib, playpen, high chair or other confining structure or piece of equipment.

Justification: Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia). Supervision of infants and toddlers added as a result of Recommendation (2) of JLARC's Follow-Up Review of Child Day Care in Virginia (House Document No. 5, 1998). Changes also needed for clarity as requested by providers and regional licensing staff.

Requirement for limitation of time in a confining device added to make standard consistent with Minimum Standards for Licensed Child Day Centers and to ensure adequate stimulation of infants and toddlers.

22 VAC 40-110-710. Level of Supervision.

Amend section to read:

A caregiver shall supervise children in a manner that ensures the caregiver is aware of what the children are doing at all times. Caregivers shall promptly assist or redirect activities when necessary and shall intervene whenever a child is endangered.

Justification: Ensure the health, safety, and welfare of children in care (§63.1-202 of the Code of Virginia); enable providers to take appropriate measures to protect children.

22 VAC 40-110-740. Diapering Steps

Amend section to also include the following:

The diapering surface shall be:

Separate from the kitchen, food preparation areas, or surfaces used for children’s activities;

Non-absorbent and washable;

Sanitized with germicidal cleansing agent after each use or protected by a disposable covering discarded after each use.

Justification: Change requested for clarity by providers and regional licensing staff. For ease of administration, makes standard more consistent with Minimum Standards for Licensed Child Day Centers.

22 VAC 40-110-800. Transportation

Amend section to read:

A. Whenever a vehicle is used by the caregiver to transport enrolled children, the caregiver shall:

1. Have a valid driver’s license;
2. Have a first aid kit, including an ice or chemical cold pack, in the vehicle used for transporting; and
3. Ensure that the vehicle meets the safety standards set by the Department of Motor Vehicles, kept in satisfactory condition to assure the safety of children, and licensed according to State law.

B. The provider shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed;
2. The children remain seated and each child’s arms, legs, and head remain inside the vehicle;
3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;

4. At least one caregiver always remains in the vehicle when children are present;
5. No child occupies the front seat if the vehicle has an operational passenger side airbag;
6. The following information is in the transportation vehicle:
 - a. A copy of the children's emergency contact and medical information.
 - b. The name, address and phone number of the family day home; and
 - c. A copy of the parent's written authorization to transport the child
 - 1) A general permission shall be obtained from the parent of each child to take the child off the premises of the family day home, on a form that lists regularly scheduled excursions (e.g., library, store, playground, swimming) and the means of transportation
 - 2) Special written permission shall be obtained before the special excursion from the parent of each child for excursions that are not regularly scheduled. The special permission shall specify destination, duration of trip, and means of transportation.
7. Each child boards and leaves the vehicle from the curb side of the street.

Justification: Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia); for ease of administration, makes standard more consistent with Minimum Standards for Licensed Child Day Centers.

22 VAC 40-110-810 through 880. Behavior and Guidance

This section will be replaced with a section that includes the following:

- A. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, caregivers shall interact with the child and one another to provide needed help, comfort, support, and:
 1. Respect personal privacy;
 2. Respect differences in cultural, ethnic, and family backgrounds;
 3. Encourage decision-making abilities;
 4. Promote ways of getting along;
 5. Encourage independence and self-direction; and
 6. Use consistency in applying expectations.
- B. The following acts or threats thereof are forbidden:
 1. Physical punishment, striking a child, roughly handling or shaking a child, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or exercise as punishment;

2. Enclosure in a small confined space or any space that the child cannot freely exit himself; however this does not apply to the use of equipment such as cribs, play pens, high chairs, and safety gates when used for their intended purpose with children preschool age or younger;
 3. Punishment by another child or other household member;
 4. Withholding or forcing of food or rest;
 5. Verbal remarks which are demeaning to the child;
 6. Punishment for toileting accidents; and
 7. Punishment by applying unpleasant or harmful substances.
- C. When time out is used as a discipline technique, it shall be used sparingly and be brief and appropriate to the child's developmental level and circumstances. The child who is separated from the group shall be in a safe, lighted, well-ventilated place and shall be within hearing and vision of the caregiver. The child shall not be left alone inside or outside of the home while separated from the group.

Note: If a caregiver enforces time out, it shall not exceed one minute for each year of the child's age. Time out shall not be used with infants.

Justification: Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia). For ease of administration, makes standard more consistent with Minimum Standards for Licensed Child Day Centers.

22 VAC 40-110-890. Food groups; lunch and dinner

22 VAC 40-110-900. Food groups; breakfast and snacks

These requirements will be amended to read:

- A. When family day homes provide meals or snacks, the most recent nutritional requirements of a recognized authority such as the Child and Adult Care Food Program of the United States Department of Agriculture (USDA) shall be met.
- B. Family day homes offering both meals and snacks shall serve a variety of nutritious foods and shall serve at least three sources of vitamin A and at least three sources of vitamin C on various days each week.
- C. When food is brought from home, the following shall apply:
 1. The food container shall be clearly labeled in a way that identifies the owner;

2. The family day home shall have extra food or shall have provisions to obtain food to serve to children so they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and
3. Unused portions of food shall be discarded by the end of the day or returned to the parent.

Justification: The Child and Adult Care Food Program has established meal pattern requirements that specify the kinds of food and amounts to be served to children. The kinds of food, or components, meet children's daily nutritional needs. The CACFP does not regulate nutrient content (Vitamin A, C, iron, etc.), however. Children need many different nutrients to grow and be healthy. Research conducted by CACFP finds that the nutrients missing most often in children's diets are Vitamins A and C. The diet quality of most children ages 2-9 is than optimal, according to USDA Center for Nutrition Policy and Promotion. Poor eating habits in young children impair their growth and development and serve as foundations for poor eating behaviors as adults. Ensure the health of children in care (§ 63.1-202 of the Code of Virginia).

22 VAC 40-110-940. Water

Amend section to also include the following:

In environments of 80° F or above, attention shall be given to the fluid needs of children at regular intervals. Children in such environments shall be encouraged to drink fluids.

Justification: Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia). For ease of administration, makes standard more consistent with Minimum Standards for Licensed Child Day Centers.

22 VAC 40-110-950. Time Schedules

These requirements will be amended to read:

- A. Family day homes shall schedule appropriate times for snacks or meals, or both, based on the hours of operation and time of the day, e.g., a family day home offering after school care shall schedule an afternoon snack; a family day home offering care from 7 a.m. to 1 p.m. shall schedule a morning snack and midday meal.
- B. The family day home shall ensure that children arriving from a half-day, morning program who have not eaten lunch receive a lunch.
- C. The family day home shall schedule snacks or meals so there is a period of at least 1 1/2 hours, but no more than 3 hours between each meal or snack unless there is a scheduled rest or sleep period for children between the meals and snacks.

Justification: For ease of administration, makes standard more consistent with Minimum Standards for Licensed Child Day Centers.

22 VAC 40-110-1000. Formula Labeling
22 VAC 40-110-1010. Formula Preparation

Sections will be renamed “**Infant Nutrition**” and amended to read:

- A. Heated formula and baby food shall be stirred or shaken and tested for temperature before serving to children;
- B. Prepared infant formula shall be refrigerated and labeled with the child’s name;
- C. Formula, bottled breast milk, and prepared baby food not consumed by an infant may be used by that same infant later in the same day, if dated and stored in the refrigerator; otherwise it shall be discarded or returned to the parent at the end of the day;
- D. A one-day’s emergency supply of disposable bottles, nipples, and commercial formulas appropriate for the children in care shall be maintained in the family day home;
- E. Breastfeeding shall be permitted;
- F. Caregivers shall feed semisolid food with a spoon unless written instructions from a physician state differently.

Justification: For ease of administration, makes standard more consistent with Minimum Standards for Licensed Child Day Centers. Change requested by providers.

22 VAC 40-110-1070. Perishable refrigeration

Amend section to also include:

Contaminated or spoiled food shall not be served to children.

Justification: For ease of administration, makes standard more consistent with Minimum Standards for Licensed Child Day Centers.

22 VAC 40-110-1090. Maintenance of Health Information

Amend section to read:

Each caregiver and any other adult household members who come in contact with children or handle food served to children shall:

- A. No earlier than six months prior to licensure, employment, or contact with children undergo :
 - 1. An assessment for risk of tuberculosis infection and disease. The

assessment shall include a review of the symptoms of active tuberculosis disease and, if indicated, tuberculin skin testing; or

2. A Purified Protein Derivative (PPD) screening.
- B. Submit a statement signed and dated by a physician, physician's designee, or an official of a local health department that:
1. Documents an assessment and the absence of symptoms of active tuberculosis infection or disease; or
 2. Documents the negative results of the Purified Protein Derivative (PPD) screening.
- C. Additional assessment or tests are not required unless the individual comes in contact with a known case of tuberculosis or develops chronic respiratory symptoms.

Justification: Change based on guidance from Virginia Department of Health, Division of Tuberculosis Control Policies.

22 VAC 40-110-1260. Records

Amend the section to also include the following:

The duration of the parent's authorization for medication, provided that it shall expire or be renewed after 10 workdays. Long-term prescription drug use may be allowed with written authorization from the child's physician and parent.

Justification: For ease of administration, makes standard more consistent with Minimum Standards for Licensed Child Day Centers. Change requested by regional licensing staff.

22 VAC 40-110-1360. 1. Information

Amend section to read:

- d. The name, address, and telephone number of each parent's place of employment;
- e. The name, address, and telephone number of two designated persons to contact in case of an emergency if the parent cannot be reached.

Add to section:

- l. Proof of the child's age and identity
- m. Names and addresses of the previous child day care and schools

Justification: Requirements of § 63.1-196.002 of the Code of Virginia (HB 946 effective July 1,1998).

22 VAC 40-110-1360. 3.b. Incorporate into a section entitled “**Giving Parents Information and Access**” which shall be amended to read:

The provider shall furnish each child’s custodial parent(s) or guardian(s) with the following:

1. Opportunities to observe the day care home in operation prior to enrollment, as well as following enrollment;
2. Opportunities prior to enrollment as well as following enrollment to discuss the child’s needs and the family day home policies, including the types of records the provider is required to keep, the licensed capacity, and the requirement for paid staff to report suspected child abuse or neglect according to §248.3 of the Code of Virginia;
3. Written information on the rules and limits used to encourage desired behavior and discourage undesired behavior of children in care as well as the home’s discipline policy and methods;
4. Written information on procedures for emergency care in case of illness or injury;
5. Written information on the percentage of time per week the child is being cared for by a caretaker other than the provider;
6. Written information on the general daily routine;
7. Written information on any special services to be provided;
8. Written information on the hours of care per day, week, or month; cost of care per day, week, or month; frequency and amount of payment per day, week, or month;
9. Immediate access to the child while the child is at the family day home;
10. Daily information about the child’s health, development, behavior, adjustment, needs, minor injuries or accidents;
11. Immediate notification whenever the child:
 - a. Has a temperature over 101°F ;
 - b. Has recurrent vomiting or diarrhea;
 - c. Has symptoms of a communicable disease as delineated in the current Communicable Disease Chart recommendation for the exclusion of sick children; has been exposed or is suspected to have been exposed to a reportable communicable disease;

- d. Has major injuries to the head or other parts of the body;
- e. Has a major accident; or
- f. Is lost or missing.

Justification: Requirements of § 63.1-195 of the Code of Virginia (HB 1387 effective July 1, 1998) for percentage of time per week that persons other than the provider will care for the child. Reorganized regulation for clarity as requested by providers and regional licensing staff. For ease of administration, makes standard more consistent with Minimum Standards for Licensed Child Day Centers.

22 VAC 40-110-1360. 3. b. (3)

Move to a section entitled “**Emergencies**” and amend section to also include:

Procedures for emergency care in case of illness or injury, written authorization to provide or arrange for emergency transportation, and written authorization for emergency medical treatment if parents cannot be located immediately (unless parent states objection to the provision of such care on religious or other grounds).

Justification: For ease of administration, makes standard more consistent with Minimum Standards for Licensed Child Day Centers. Allows for cultural differences.

Add a section entitled “Nighttime Care” which includes the following:

- A. Children shall be bathed, if needed, and with parents’ permission.
- B. No child under five years of age or a child older than five who lacks the motor skills and strength to avoid accidental drowning, scalding or fall while bathing shall be left unattended while in the bathtub.
- C. Each infant shall have an individual crib that meets the requirements of 22 VAC 40-110-540 and each child shall have an individual bed or cot equipped with mattress, clean sheets and an appropriate cover.
- D. Drinking water shall be available to children during the night.
- E. The caregiver shall ask the parents to provide the child with comfortable sleepwear, a toothbrush, comb or brush. These items shall be labeled and stored separately for each child.
- F. Children shall have a routine that encourages good personal hygiene practices.
- G. Caregivers shall remain awake until all children are asleep.

H. Caregivers shall establish bedtime schedules for children in consultation with the child's parent(s).

I. Caregivers shall be able to hear and respond quickly to children if needed.

J. Staff ratios shall be maintained at all times.

K. Separate sleeping and dressing areas shall be provided for children of the opposite sex over six years of age.

Justification: Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia). Change requested by regional licensing staff.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

The following methods were used to identify less burdensome and less intrusive alternatives for achieving the essential purpose of the regulation:

1. Notice of the 20-day public comment period for the periodic review published in The Virginia Register February 15, 1999;
2. Notice of 20-day public comment period for the periodic review mailed to all licensed family day home providers, all voluntarily registered family day home providers, licensed family day systems, contracting organizations for voluntary registration, regional licensing offices, and individuals on the interested parties list for the regulation;
3. Interviews with all regional licensing administrators and several regional children's program licensing specialists;
4. Interviews with child care/development experts and licensed family day home providers including representatives of the Virginia Alliance of Family Child Care Associations;
5. Review of all other states' family day home regulations;
6. Review of current recommendations from the United States Consumer Product Safety Commission, the American Society for Testing Materials, and the American Academy of Pediatrics;
7. Review of report of the Joint Legislative Audit and Review Commission, Follow-up Review of Child Day Care in Virginia (House Document No. 5, 1998);
8. Review of all technical assistance questions that have been received from licensing staff since last revision of regulation (1993);
9. Review of all other Virginia Department of Social Services licensing standards for children and adult programs;
10. Meetings with representatives of the State Fire Marshal's Office, the Department of Housing and Community Development, and the Virginia Department of Health.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

On consumers:

This proposed regulation will strengthen the authority and rights of parents in the education, nurturing, and supervision of their children. The following components of the proposed regulation will enable parents to be better informed when choosing or evaluating child day care services: clarifications which make the requirements for licensed family day homes easier to understand; the incorporation of the Code requirements for disclosing to parents the amount of time per week a substitute provider is used; and the requirement that providers give parents information on the operation of the home and on children's problems and development.

Children in care will benefit from requirements that ensure providers are better prepared and trained to give children safe, quality care. However, the proposed regulation's increased provider training and education requirements for homes serving 9-12 children will not decrease the options for families for day care since only new providers need to meet the increased requirements and the requirements may be waived for providers completing a curriculum approved by the Department.

The proposed regulation encourages economic self-sufficiency, self-pride, and the assumption of responsibility for one's self, one's spouse, and one's children. Parents will be able to be employed while having the assurance that their children are being cared for by licensed family day homes that have requirements protecting the health, safety, and welfare of the children.

The proposed regulation has no impact on the marital commitment.

Potentially, the regulation could have a positive impact on disposable family income. The availability of safe child care will enable parents to be employed.

On providers:

This proposed regulation will strengthen the authority and rights of parents in the education, nurturing and supervision of their children by enabling providers to operate family day homes in their residences. Providers will be able to be employed while remaining at home to nurture and supervise their own children.

The proposed regulation encourages economic self-sufficiency, self-pride, and the assumption of responsibility for one's self, one's spouse, and one's children. Family day home providers are

self-employed individuals who through the operation of a family day home can increase the family's income yet be at home to manage the household.

The proposed regulation will not have a significant cost impact on providers because most of the changes require increased oversight and actions to prevent injuries. These requirements would have no associated costs other than the provider's time and would benefit the provider through risk management. Providers would have no difficulty meeting the increased training requirements since the Department offers free training sessions to providers, including televised training.

The proposed regulation may have a positive impact on marital commitment by enabling the provider to stay at home.

Potentially, the regulation could have a positive impact on disposable family income by enabling the provider to operate her own business. The provider's liability is reduced by health and safety regulations that minimize risk to children in day care. The regulation could have a negative impact on the provider's disposable family income as a result of language in the regulation discouraging providers from engaging in employment outside the family day home during hours of operation, the requirement for operating swimming pools according to local ordinances and Department of Health requirements, and the requirement for the provision of extra food if a child brings an insufficient meal or snack from home.